

REMARKS

In the April 25, 2008 Office Action, the Examiner stated that restriction to one of the following inventions is required under 35 U.S.C. §121 and §372. The Examiner asserted that this application contains inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1. The Examiner requested that applicants elect one of the following groups and identify the claims encompassing the elected invention.

- I. Claims 1, 5, 12, and 17, drawn to purified polypeptides comprising SEQ ID NO:X; or
- II. Claims 6, 8-10, and 13, drawn to isolated polynucleotides comprising SEQ ID NO:X, vectors, and host cells comprising said polynucleotides; or
- III. Claim 11, drawn to a process for preparing a polynucleotide by culturing a host cell; or
- IV. Claims 14, 18, 21, and 25, drawn to methods for killing or inhibiting a fungus and/or a bacteria using a polypeptide comprising SEQ ID NO:X; or
- V. Claim 15, drawn to a transgenic plant comprising a polynucleotide encoding a polypeptide comprising SEQ ID NO:X; or
- VI. Claims 16 and 23, drawn to methods of controlling crop infection by cultivating a transgenic plant; or
- VII. Claim 17, drawn to a transgenic animal comprising a

polynucleotide encoding a polypeptide comprising SEQ ID NO:X; or

VIII. Claim 20, drawn to an antibody that binds to a polypeptide comprising SEQ ID NO:X.

In response, applicants hereby elect, with traverse, Group V, which includes claim 15, drawn to a transgenic plant comprising a polynucleotide encoding a polypeptide comprising SEQ ID NO:X.

In the Office Action, the Examiner also required the applicants to elect a single disclosed species of polypeptide sequence. Applicants hereby elect, with traverse, "GM-moricin A (SEQ ID NO:4)", which reads on claim 15.

In the April 25, 2008 Office Action, the Examiner asserted that the inventions listed as Groups I - VIII do not relate to a single general inventive concept under PCT Rule 13.1 because under PCT Rule 13.2 they lack the same or corresponding special technical features. The Examiner then alleged that the technical feature linking Groups I - VIII appears to be a *Galleria* polypeptide with antibacterial or antifungal activity and that Schuhmann et al. (Arch. Insect Biochem. Physiol., 53:125-133, 2003) discloses an antimicrobial polypeptide isolated from *Galleria mellonella* and accordingly, the technical feature linking the inventions of Group I - VIII do not constitute a special technical feature as defined by PCT Rule 13,2 as it does not define a contribution over the art.

In response, applicants respectfully disagree. Specifically, applicants maintain that the polypeptide disclosed in Schuhmann et al. is known in the art as defensin. Defensins are a cysteine-knot tertiary structure protein involving three pairs of

disulfide bridges. These types of polypeptides are completely structurally distinct from the moricins of the claimed invention, which are an alpha-helical peptide family characterized by a long linear alpha-helical tertiary structure, a part of which is amphipathic.

Furthermore, at the primary amino acid level defenism and the claimed molecules and the molecules disclosed in Schuhmann are also unrelated. For example, the area of identity between the molecules of Schuhmann and *Galleria moricinA* (SEQ ID NO:4) is 33.3% identity over a very small 12 amino acid stretch. Alignments for the other polypeptides defined in claim 1 of the present specification with the defenism molecule of Schuhmann give similar results.

Pending claim 1 defines the claimed polypeptide structurally. For the reasons outlined above, applicants maintain that parts i) to vii) of claim 1 are clearly distinct from Schuhmann. Part ix) relates to a biologically active fragment, however, considering the low level of sequence homology over a very small region there is no justification to consider that part ix) of claim 1 does not provide a special technical feature over Schuhmann. Applicants maintain that any issues that could potentially relate to the novelty and inventiveness of the fragments of part ix) of claim 1 should more appropriately be dealt with during substantive examination.

The present invention has identified and claimed a novel group of related polypeptides, which are clearly linked so as to form a single general inventive concept, and hence claims 1, 5, 6, 8-18, and 20 all relate to a single invention and therefore are in accordance with PCT Rule 13.1. Accordingly, applicants

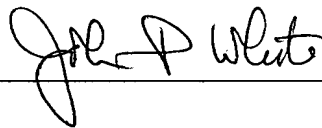
Applicants: Peter David East and Susan Elizabeth Brown
Serial No.: 10/590,539
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respectfully request that the Examiner reconsider and withdraw this Restriction.

If a telephone interview would be of assistance in advancing prosecution of the subject application, applicants' undersigned attorney invites the Examiner to telephone him at the number provided below.

No fee, other than the \$120.00 fee for a one-month extension of time, is deemed necessary in connection with the filing of this Communication. However, if any additional fee is required, authorization is hereby given to charge the amount of any such fee to Deposit Account No. 03-3125.

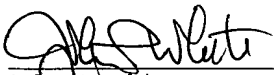
Respectfully submitted,



John P. White
Registration No. 28,678
Attorney for Applicants
Cooper & Dunham LLP
1185 Avenue of the Americas
New York, New York 10036
Tel. No. (212) 278-0400

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John P. White June 25, 2008
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